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**IN THE
COURT OF APPEALS OF INDIANA**

C.Q.,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 28A01-0609-JV-404
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE GREENE CIRCUIT COURT
The Honorable Erik C. Allen, Judge
Cause No. 28C01-0604-JD-40

March 23, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

C.Q. appeals the dispositional order imposed after he was adjudicated a delinquent child. We affirm.

Issues

C.Q. raises two issues, which we restate as:

- I. whether the juvenile court properly ordered C.Q. to obey any rules and regulations imposed by the probation department; and
- II. whether the juvenile court properly ordered C.Q. to be placed on electronically monitored home detention until further order of the court.

Facts

On July 25, 2006, fifteen-year-old C.Q. was found to have committed child molesting, a Class B felony if committed by an adult, and was adjudicated a delinquent child. On August 23, 2006, the juvenile court issued a dispositional order, which required in part:

3. Juvenile shall be on GPS electronically monitored home detention until further order of the Court.

* * * * *

8. Juvenile is to obey any rules and regulations as may be imposed upon him by the Greene County Probation Department or his parents.

App. p. 107. C.Q. appeals these terms of the dispositional order.

Analysis

I. Probation

C.Q. argues that the juvenile court improperly exceeded its authority when it ordered him “to obey any rules and regulations as may be imposed upon him by the Greene County Probation Department or his parents.”¹ App. p. 107. C.Q. contends that the juvenile court was not authorized “to delegate its authority and duty regarding disposition decrees.” Appellant’s Br. p. 4.

Indiana Code Section 31-37-19-5(b) provides in part:

The juvenile court may, in addition to an order under section 6 of this chapter, enter at least one (1) of the following dispositional decrees:

- (1) Order supervision of the child by:
 - (A) the probation department;
 - (B) the county office; or
 - (C) the department.

Although the dispositional order is broadly worded, Indiana Code Section 31-37-19-5(b)(1)(A) authorized the juvenile court to order the supervision of C.Q. by the probation department. Inherent to such an order is the ability of the Greene County Probation Department to impose rules and regulations as part of its supervision of C.Q. Given this statutory authority, C.Q.’s argument that the juvenile court exceeded its authority fails.

C.Q. also argues that the juvenile court’s probation order is similar to a restitution order in an adult criminal proceeding. He points out that in ordering restitution as a

¹ C.Q. does not challenge the portion of the order requiring him to obey the rules and regulations imposed by his parents.

condition of probation, the trial court must fix the amount of restitution and the manner of performance. Indeed, Indiana Code Section 35-38-2-2.3(a)(5) provides that as a condition of probation the court may require a person to:

[m]ake restitution or reparation to the victim of the crime for damage or injury that was sustained by the victim. When restitution or reparation is a condition of probation, the court shall fix the amount, which may not exceed an amount the person can or will be able to pay, and shall fix the manner of performance.

However, C.Q. does not point to any authority requiring a juvenile court to fix all of the specific rules and regulations of a juvenile's probation in the dispositional order, and we decline to impose such a burden on juvenile courts.

II. Home Detention

C.Q. also argues that the statutes governing juvenile dispositions do not authorize the imposition of GPS electronically monitored home detention as a condition of probation. Although the statutes governing juvenile dispositions do not specifically address the issue of home detention, Indiana Code Section 35-38-2.5-5(a) permits a court to order, as a condition of probation, "an offender confined to the offender's home for a period of home detention lasting at least sixty (60) days." For purposes of this chapter, "offender" is defined as "(1) a criminal offender, which is a person of any age who is convicted of a crime; or (2) a delinquent offender, which is a person who is adjudged delinquent by a juvenile court." Ind. Code § 11-8-1-9; see also I.C. § 35-38-2.5-4. Thus, a person adjudged delinquent, like C.Q., is an "offender" and may, as a condition of probation, be ordered to home detention.

Further, in determining whether juvenile courts are authorized to order a juvenile to home detention pending a fact-finding hearing, our supreme court has stated:

We are satisfied that included within the broader power to detain in a facility lies the power to order a less restrictive form of detention at home, where parents or guardians can participate in the child's supervision. Home detention furthers the policy directives of the Juvenile Code, and as the trial judge points out, it provides a convenient alternative to traditional detention for some counties and a necessary alternative for others.

W.A. v. Marion County Superior Court, Juvenile Div., 704 N.E.2d 477, 479 (Ind. 1998) (footnote omitted). Although C.Q. was ordered to home detention in a dispositional order and not prior to the fact-finding hearing, Indiana Code Section 31-37-19-6(b)(2)(A) authorizes a juvenile court to award wardship of the child to the Department of Correction for housing in a correctional facility for children or to a community based correctional facility for children. We see no reason why a juvenile court would be authorized to impose home detention prior to a fact-finding hearing but not after the child has been adjudicated delinquent when, under both circumstances, the child may be detained in a state facility. We conclude that the power to order home detention following a delinquency adjudication inherently lies within the greater power to detain a juvenile in a state facility. See id. at 480.

Regarding the GPS electronic monitoring of C.Q. while he is on home detention, our supreme court has concluded that the home detention statutes, which define juvenile delinquents as offenders, permit the GPS electronic monitoring of offenders as a form of home detention. Chism v. State, 824 N.E.2d 334, 335 (Ind. 2005). After our supreme

court decided Chism, the General Assembly changed the definition of “monitoring device” to include “any device that can reliably determine the location of an offender and track the locations where the offender has been, including a device that uses a global positioning system satellite service.” I.C. § 35-38-2.5-3(b). Because, as discussed above, the home detention statutes include a person adjudged delinquent as an offender, C.Q. unsuccessfully attempts to distinguish the juvenile statutory scheme from the adult statutory scheme in this context. C.Q. has not established that the juvenile court improperly ordered GPS electronically monitored home detention.

C.Q. also argues that home detention is not the least restrictive placement for C.Q., that it interferes heavily with family autonomy, that it disrupts family life, and that it imposes considerable restraints on C.Q. and his mother. The disposition of a child adjudicated to be delinquent is left to the discretion of the juvenile court. J.B. v. State, 849 N.E.2d 714, 717 (Ind. Ct. App. 2006). The juvenile court’s discretion, however, is subject to the statutory considerations of the child’s welfare, the community’s safety, and the policy of favoring the least-harsh disposition. Id.; see also I.C. § 31-37-18-6. We will reverse a juvenile disposition only for an abuse of discretion, which occurs only if the juvenile court’s action is clearly erroneous and against the logic and effect of the facts and circumstances before it, or against the reasonable, probable, and actual deductions to be drawn therefrom. Id.

Indiana Code Section 31-37-18-6 provides:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and

(B) close to the parents' home, consistent with the best interest and special needs of the child;

(2) least interferes with family autonomy;

(3) is least disruptive of family life;

(4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and

(5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

Although the juvenile court acknowledged the restrictive nature of home detention, it also recognized that it would help protect C.Q. during the probationary period. Moreover, C.Q. was adjudicated a delinquent child for committing child molesting, an offense that would have been a Class B felony if committed by an adult. Specifically, at a Christmas party at C.Q.'s house, C.Q. threatened to beat up his nine-year-old cousin, D.K., and forced D.K. to put C.Q.'s genitals in D.K.'s mouth. Tr. p. 18.

Ironically, C.Q. argues that the home detention "interferes heavily with family autonomy because it seemingly requires C.Q. to stay at home when other family members leave the house for any reason, even to visit relatives for the holidays." Appellant's Br. p. 7. Given that C.Q. committed this offense against a family member at a holiday party, this argument is curious. The ordering of home detention is consistent with the safety of the community and C.Q.'s best interests. Although home detention

imposes a burden on C.Q., the juvenile court did not abuse its discretion in ordering such.

Finally, C.Q. argues that his home detention has improperly exceeded ninety days. He relies on Indiana Code Section 31-37-19-6(b)(2)(B), which provides that if the child is less than seventeen years old, the juvenile court may:

order confinement in a juvenile detention facility for not more than the lesser of:

- (i) ninety (90) days; or
- (ii) the maximum term of imprisonment that could have been imposed on the child if the child had been convicted as an adult offender for the act that the child committed under IC 31-37-1 (or IC 31-6-4-1(b)(1) before its repeal).

(Emphasis added). Citing W.A., C.Q. contends that home detention is a form of detention and that because more than ninety days has elapsed since C.Q. began his home detention, this condition of probation must be vacated. In W.A. our supreme court interpreted Indiana Code Section 31-37-11-2(a), which limits pre-fact-finding hearing detention and provides, “If: (1) a child is in detention; and (2) a petition has been filed; a fact-finding hearing or a waiver hearing must be commenced not later than twenty (20) days . . . after the petition is filed.” The W.A. court concluded that home detention is a form of detention and a juvenile must be given a fact-finding hearing, when one is necessary, within twenty days. W.A., 704 N.E.2d at 481.

Unlike Indiana Code Section 31-37-11-2, the juvenile pre-fact-finding hearing detention statute, which broadly refers to a child “in detention,” the statute upon which C.Q. relies for the ninety day limit specifically refers to “confinement in a juvenile

detention facility.” I.C. § 31-37-19-6(b)(2)(B). Because C.Q. was placed on home detention after he was adjudicated a delinquent child and was not confined in a juvenile detention facility, the ninety-day limit does not apply to the dispositional order.

Conclusion

C.Q. has not established that the juvenile court improperly ordered him to comply with the rules and regulations imposed by the probation department or that it improperly ordered GPS electronically monitored home detention. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.